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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/619,891	07/15/2003	Vincent De Laforcade	NONY 3.0-004	7321
530	7590	10/07/2008	EXAMINER	
LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK 600 SOUTH AVENUE WEST WESTFIELD, NJ 07090				DOAN, ROBYN KIEU
ART UNIT		PAPER NUMBER		
3732				
MAIL DATE		DELIVERY MODE		
10/07/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/619,891	DE LAFORCADE, VINCENT	
	<b>Examiner</b>	<b>Art Unit</b>	
	Robyn Doan	3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 30 June 2008.

2a) This action is **FINAL**.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 58,63,65-83,85,86 and 97-107 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 58,63,65-83,85,86 and 97-107 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 3/17/08.

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_ .

5) Notice of Informal Patent Application

6) Other: \_\_\_\_\_.

## DETAILED ACTION

Applicant's Amendment filed 6/30/2008 has been entered and carefully considered. Claims 58, 63, 65-70, 72-75, 77-82, 85, 86, 98, 100, 102, 103 have been amended. New claims 104-107 have been added. Limitations of new and amended claims have not been found to be patentable over newly discovered prior art, therefore, claims 58, 63, 65-83, 85, 86, 97-107 are rejected under the new ground rejections as set forth below.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

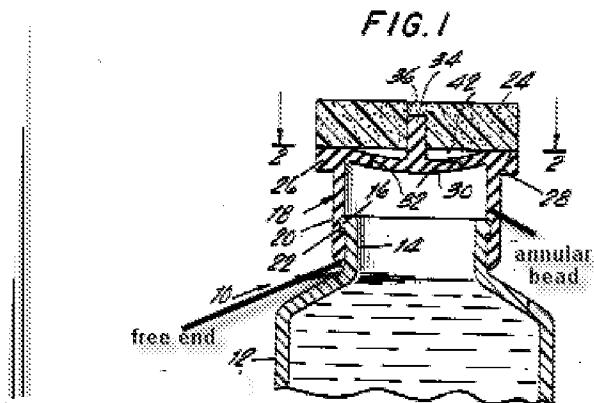
A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 86, 97 are rejected under 35 U.S.C. 102(b) as being anticipated by Schwartzman (USP 3,410,645).

Schwartzman discloses an applicator (24, fig. 1) comprising fixing means (whole portion of 18) for removably affixing the applicator to a neck (14) of a receptacle (12), the applicator including an assembly skirt with a free end (see below attachment) and an annular sealing bead (see below attachment) formed on an inside surface of the assembly skirt and spaced from the free end, wherein the fixing means being situated between the free end and the annular bead (Applicant is noted that the portion of 18

above the free end portion and below the bead is considered as being in between the free end and the annular bead.



***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 105 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schwartzman in view of Hammond (USP 4,555,194).

Schwartzman discloses the essential claimed invention except for screw means for screw fastening the applicator on the neck of the receptacle. Hammond discloses an applicator (30) having screw means (40) for screw fastening the applicator on the neck of the receptacle (10). It would have been obvious to one having an ordinary skill in the

art at the time the invention was made to employ the screw means as taught by Hammond into the fixing means of Schwartzman as an alternative means to fasten the applicator to the neck of the receptacle.

Claims 58, 63, 77-83, 98-103, 106 and 107 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hulsch in view of Schwartzman.

With regard to claims 58, 63, 77, 100, 106, 107, Hulsch discloses a kit (fig. 4) comprising a receptacle (11) having a body (10) containing a cosmetic (col. 1, line 24, Applicant is noted that toothpaste is considered as a cosmetic because it enhances the beauty of the teeth), a neck (12) having an opening (17) into the body, the neck having a first portion (15) having a first inside diameter (see fig. 2) and a first fixing means (16), a second portion (at 12) with a second fixing means (13) locating between the body and the first portion and having a second thread (13) and a second inside diameter, an accessory (30) removably connection to the neck of the receptacle, said neck having a shoulder (14) connecting the first portion to the second portion and an assembly skirt (34) that cooperates with the second portion of the neck. Hulsch fails to show the second inside diameter being greater than the first inside diameter, the assembly skirt including a sealing surface that abuts the shoulder. Schwartzman, as discussed above, discloses an applicator (24, fig. 1) comprising an assembly skirt with an annular sealing bead formed on an inside surface of the assembly skirt. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to modify the assembly skirt of Hulsch with the sealing surface as taught by Schwartzman in order to securely seal the applicator to the neck of the receptacle. And it would have been

obvious to one having an ordinary skill in the art at the time the invention was made to construct the second inside diameter being greater than the first inside diameter, since such a modification would have involved a mere change in the size of the known component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955). In regard to claim 78, it would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct a snap fastening member to at least one of the fixing means, since such modifications is well known in the art. In regard to claims 79-83, Hulsch discloses at least two accessories (20, 30), a first one including a cap (20) and a second one including an applicator (30) and wherein the two accessories each incorporating with the first and second portions of the neck. In regard to claim 98, Hulsch shows the shoulder (14) having a planar annular surface (see fig. 4) extending outside the neck, the shoulder being perpendicular to the neck. In regard to claim 99, Hulsch shows both of the fixing means includes threads (see fig. 4). In regard to claim 101, it would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct the receptacle with plastic material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. In regard to claim 102, Hulsch shows the accessory being removably fixing onto the neck of the receptacle by fastening only on the second fixing means (13) (see fig. 4). In regard to claim 103, Hulsch shows the threads inherently able screw fastening by turning in a same direction.

Claims 65-72, 74-76, 104 rejected under 35 U.S.C. 103(a) as being unpatentable over Hulsch in view Schwartzman as applied to claim 58 above, and further in view of Elmer et al (U.S. Pat. # 6,457,476).

With regard to claims 64-68, Hulsch in view Schwartzman disclose a kit comprising all the claimed limitations in claims 58, as discussed above except for and a row of teeth including at least a pair of end teeth located at respective ends of the row, at least one of the teeth having at least one dispenser orifice, at least one dispenser orifice substantially limits dispensing of the contents other than between the teeth. As to claims 70-72 and 74-75, Hulsch in view of Ogino et al also fail to show at least exterior of at least one tooth between the first and last teeth having a plurality of dispensing orifices, the plurality of orifices being positioned so as to oppose another one of the teeth and the applicator having at least six teeth, each including an orifice. Elmer et al discloses an applicator (20, figs. 2, 7) comprising one row of at least six teeth (fig. 2) being the same length, each tooth includes at least one orifice (62) being displaced from the free end of the tooth; Elmer et al also shows a pair of end teeth (fig. 2) having orifices (62, 68) which faces others of the at least one row of teeth (fig. 7), at least one tooth (50) located between the pair of end teeth having a plurality of orifices (62, 68, fig. 7) on the exterior of the one tooth, the plurality of orifices being located on opposite sides of the one tooth (fig. 7). Elmer et al inherently shows at least one dispenser orifice (62, 68) substantially limits dispensing of cosmetic other than between the teeth. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the particular structures of the teeth as taught by Elmer

et al as discussed above into the applicator of Hulsch in view of Schwartzman in order to effectively deliver the liquid to the hair of the user. In regard to claim 69, it would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct the end teeth with no dispensing orifices as an obvious matter of design choice for the known component. In regard to claim 76, it would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct the applicator with molding, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Claim 73 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hulsch in view of Schwartzman and further in view of Elmer and further in view of Kirschenbaum (U. S. Pat. # 2,270,529).

With regard to claim 73, Hulsch in view of Schwartzman and further in view of Elmer disclose a kit comprising all the claimed limitations in claim 65, as discussed above except for at least one tooth having a groove extending from a free end of the tooth to the at least one orifice. Kirschenbaum discloses a comb applicator (fig. 3) comprising at least one tooth (76) having at least one dispenser orifice (79) being displaced from the free end of the one of said teeth and at least one tooth having a groove (80) extending from a free end (78) of the tooth to the at least one orifice. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the particular structures of the teeth as taught by Kirschenbaum as discussed above into the applicator of Hulsch in view of Schwartzman

and further in view of Elmer in order to retard to rapid flow of the liquid down to the teeth.

Claims 58 and 85 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schwartzman in view of Hulsch.

With regard to claim 58, Schwartzman, as discussed above, discloses an applicator (24, fig. 1) comprising fixing means (whole portion of 18) for removably affixing the applicator to a neck (14) of a receptacle (12), wherein the receptacle containing a cosmetic (col. 1, line 26) the applicator including an assembly skirt with a free end (see above attachment) and an annular sealing bead (see above attachment) formed on an inside surface of the assembly skirt and spaced from the free end, wherein the fixing means being situated between the free end and the annular bead.

Schwartzman fails to show the neck having a first portion having a first inside diameter and a first fixing means a second portion with a second fixing means locating between the body and the first portion and having a second thread and a second inside diameter, an accessory removably connection to the neck of the receptacle, said neck having a shoulder connecting the first portion to the second portion and an assembly skirt that cooperates with the second portion of the neck; Schwartzman also fails to show the second inside diameter being greater than the first inside diameter. Hulsch discloses a kit (fig. 4) comprising a receptacle (11) having a body (10) containing a cosmetic (col. 1, line 24, Applicant is noted that toothpaste is considered as a cosmetic because it enhances the beauty of the teeth), a neck (12) having an opening (17) into the body, the neck having a first portion (15) having a first inside diameter (see fig. 2) and a first fixing

means (16), a second portion (at 12) with a second fixing means (13) locating between the body and the first portion and having a second thread (13) and a second inside diameter, an accessory (30) removably connection to the neck of the receptacle, said neck having a shoulder (14) connecting the first portion to the second portion and an assembly skirt (34) that cooperates with the second portion of the neck. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the particular neck as taught by Hulsch into the device of Schwartzman in order to enhance the fastening between the applicator and the neck of the receptacle. And it would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct the second inside diameter being greater than the first inside diameter, since such a modification would have involved a mere change in the size of the known component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955). In regard to claim 85, it would have been a matter of design choice to employ the hair coloring product as a cosmetic since such modifications is well known in the art.

### ***Response to Arguments***

Applicant's arguments with respect to claims 58, 86 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robyn Doan whose telephone number is (571) 272-4711. The examiner can normally be reached on Mon-Fri 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robyn Doan/  
Primary Examiner, Art Unit 3732